

REMARKS

The claims are claims

Claims 1, 35, 38, 39, 42 to 46 and 49 to 90 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 35, 39, 42, 43 and 46 have been amended as suggested by the Examiner in response to the rejection under 35 U.S.C. 112. This change in language obviates the rejection for indefiniteness. Dependent claims 38, 44 to 46, 49 to 80, 82, 83 and 85 to 90 are now not dependent upon a rejected base claim and thus also allowable.

Claim 81 is dependent upon claim 37. Claim 84 is dependent upon claim 41. Neither claim 37 nor claim 41 include the indefinite language noted in the FINAL REJECTION. Accordingly, this rejection is also not applicable to claims 81 and 84.

Claims 37 and 41 recite subject matter not made obvious by the combination of Kaplan and Shah-Nazaroff et al. Claim 37 recites "the client transmitting to the server identification of a type of payment authorization selected from among a plurality of differing types of payment authorizations" and "defining at the server a level of content degradation as a function of the identified type of payment authorization." Claim 41 recites "the client establishing communication with the server to identify the client and a client payment instrument to the server, the client payment instrument selected from among a plurality of differing types of client payment instruments" and "the server defining a level of content degradation as a function of said client payment instrument." This limitation is not made obvious by the combination of Kaplan and Shah-Nazaroff et al.

The FINAL REJECTION states that Figure 2 of Kaplan shows authorization requests and replies and further states at page 3, lines 5 and 6:

"accepting different credit cards and debit cards is an inherent feature"

The Applicants respectfully submit that Kaplan only discloses payment by credit card. Kaplan discloses "an access card similar to a credit card" at column 6, line 65 to column 7, line 2. Kaplan discloses at column 10, lines 37 to 39 using a credit card number for identity purposes. Kaplan discloses at column 18, lines 7 to 10 selection of a particular credit card. This selection is illustrated in Figure 57 of Kaplan. Thus Kaplan teaches only a single type of payment authorization and not the plural types recited in claims 37 and 41. Even if Kaplan inherently accepts the recited plural types of payment authorizations, there is no teaching in Kaplan that any action taken depends upon the type of payment authorization. Figure 5 and the corresponding text of Shah-Nazaroff et al teach only a single type of payment authorization. Shah-Nazaroff et al teaches billing server 320 at column 5, lines 12 to 62. There are various recitations of billing server 320 "billing" client accounts. The only concrete description of payment authorization type is "credit card" at column 5, line 24 and "credit account" at column 5, lines 55 and 56. The Applicants respectfully submit these are differing descriptions of the same type payment authorization. This application teaches various payment types at page 7, lines 16 to 28, which states:

"The merchant to payment gateway communication link 170 operates under a secure payment protocol referred to as merchant-originated secure electronic transactions (MOSET) which is a kind of secure electronic transactions (SET) protocol developed by Visa and MasterCard. Other suitable

secure payment protocols include: secure transaction technology (STT); secure electronic payments protocol (SEPP); Internet keyed payments (iKP); net trust; and cybergash credit payment protocol, to name but some. Generally, these secure payment protocols require the customer to operate software that is compliant with the secure payment technology. The protocol is used for interacting with the third-party certification authorities, allowing the customer to transmit encoded information to a merchant, some of which may be decoded by the merchant 130 and some of which can be decoded only by the payment gateway 140. Alternatively, the purchase could be enacted using a pre-authorized money card."

This application further discloses various types of payment authorization at page 10, lines 16 to 19, which states:

"An authorization transaction is used to validate the payment instrument tendered by the customer for a prospective sale. Various payment instruments may be supported, selectable by the customer. Support can be included for credit cards, debit cards, electronic cash, electronic checks and smart cards, for example."

This is in clear contrast to Kaplan and Shah-Nazaroff et al which only teach credit card transactions. Accordingly, claims 37 and 41 are not obvious from the combination of Kaplan and Shah-Nazaroff et al.

Claims 31 and 47 recite differing content degradation based upon "the identified type of payment authorization" (claim 37) and the "client payment instrument" (claim 41). The varying quality of Shah-Nazaroff et al is based upon an offered payment amount and not the type of payment authorization. The Applicant submits that the Examiner has never pointed out any portion of Kaplan nor of Shah-Nazaroff et al as allegedly making obvious varying the quality of transmission based upon the type of payment instrument selected from among a plurality of types. The FINAL REJECTION states at page 3, lines 15 to 18:

"Based on the teaching of Shah-Nazaroff et al., it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify Kaplan system to select a defined quality level (degraded level) in order to increase profits by providing alternative quality products."

In contrast this application states at page 2, lines 4 to 6:

"It is thus an aim of the invention to provide means by which a potential purchaser of a video or audio product can sample the product without compromising the purchase."

This application further states at page 3, lines 16 to 23:

"It is therefore possible for a content provider to change the characteristics of an audio or video data stream supplied over a network or other public communications system to a potential purchaser by degrading it in a controlled and variable manner. The amount of degradation is preferably sufficient to enable a potential purchaser to appreciate the characteristics of the audio or video product, whilst reducing the perceived quality. In addition, the changes to the characteristics of the audio or video data stream are preferably such that the original high-fidelity product cannot be reconstructed from the low-fidelity pre-purchase sample."

This purpose of the present invention so differs from the rationale proposed by the Examiner that one skilled in the art would not be motivated by the combination of Kaplan and Shah-Nazaroff et al to achieve the invention recited in claims 37 and 41. The FINAL REJECTION fails to point out any part of Kaplan teaching this subject matter recited in claims 37 and 41. Accordingly, claims 37 and 41 are allowable over the combination of Kaplan and Shah-Nazaroff et al.

Claim 41 recites further subject matter not made obvious by the combination of Kaplan and Shah-Nazaroff et al. Claim 41 recites both "transmitting to the client a degraded evaluation version of the selected product without payment authorization, the

degraded evaluation version of the selected product having a degraded perceived quality" and "transmitting to the client a non-degraded version of the selected product." The combination of Kaplan and Shah-Nazaroff et al fails to make obvious the transmission of both a degraded evaluation version without payment authorization and a non-degraded version of the selected product following payment authorization. Neither Kaplan nor Shah-Nazaroff et al include any teachings why supplying the same selected product in degraded and non-degraded versions is advantageous. In contrast, the teachings of this application quoted above provide a reason for transmission of a degraded version without payment followed by a non-degraded version following payment authorization. The FINAL REJECTION fails to point out where either Kaplan or Shah-Nazaroff et al makes obvious this limitation of claim 41. The portion of Shah-Nazaroff et al cited by the Examiner teaches delivery of varying signal quality dependent upon varying payment levels. This fails to teach delivery of a degraded evaluation version without payment authorization. In particular, all of the options illustrated in Figure 5 of Shah-Nazaroff et al require some payment. Accordingly, claim 41 is allowable over the combination of Kaplan and Shah-Nazaroff et al.

Claims 81 and 84 recite subject matter not made obvious by the combination of Kaplan and Shah-Nazaroff et al. Claims 81 and 84 each recite the plurality of payment authorizations "includes at least one selected from the group consisting of credit card, debit card, electronic cash, electronic check and smart card." Neither Kaplan nor Shah-Nazaroff et al include any teachings to make obvious this subject matter. Accordingly, claims 81 and 84 are allowable.

The Applicants respectfully request entry and consideration of this amendment. Entry of this amendment is proper at this time because the amendment serves only to clarify subject matter

previously recited by adopting the suggestion of the Examiner. Thus no new search or reconsideration is required.

The Applicants respectfully submit that all the present claims are allowable for the reasons set forth above. Therefore early entry of this amendment, reconsideration and advance to issue are respectfully requested.

If the Examiner has any questions or other correspondence regarding this application, Applicants request that the Examiner contact Applicants' attorney at the below listed telephone number and address to facilitate prosecution.

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